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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,710	07/21/2003	Joseph Maranto	W-3942	7575
7590 06/29/2004				
WORREL & WORREL ST. CROIX PROFESSIONAL CENTER SUITE 121 2109 W. BULLARD AVE. FRESNO, CA 93711-1258			EXAMINER KIZILKAYA, MICHELLE R	
			ART UNIT 1661	PAPER NUMBER

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/624,710	<b>Applicant(s)</b> MARANTO, JOSEPH	
	<b>Examiner</b> Kizilkaya Michelle	<b>Art Unit</b> 1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 7/21/03.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/21/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

**Objection to the Disclosure**

**37CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of the plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and the character of the area where the plant was discovered.

**35 USC 112**

The following is a quotation of the first paragraph of 35 USC 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out the invention.

The following is a quotation of the second paragraph of 35 USC 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

As specific to the United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

In plant applications filed under 35 USC 161, the requirements of 35 USC are limited. The following is a quotation of 35 USC 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163(a) and 35 U.S.C. 112, first paragraph because the specification presents less than a full, clear and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More specifically:

- A. Applicant must set forth the scientific binomial in the proper format at the top of the specification, under a separate heading.
  - B. Applicant should set forth the patent status of all cultivars set forth in the application by providing the US Plant Patent number is applicable or by inserting the phrase --(not patented)--.
  - C. Applicant should provide comparisons of the instant plant to both parents as well as any rootstocks used in the development of the instant plant.
  - D. Applicant should set forth the age and the environmental conditions of the plant depicted in the drawing in the description of the drawings. Also, applicant should set forth the age of the plants described in the detailed botanical description.
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E. Applicant must set forth all cultivars names mentioned throughout the specification in single quotation marks unless preceded by either -- cv.—or — cultivar --.

F. Applicant should account for the presence of anthocyanin coloring if present.

The above listing may not be complete. Applicants should carefully compare the claimed plant with the botanical description set forth in the specification to ensure the completeness and accuracy and to distinguish the plant within this expanding market class. Any further botanical information should be imported into the specification, as should any additional or corrected information relative to the same.

**Claim Rejections**

**35 USC 112, 1<sup>st</sup> and 2<sup>nd</sup> Paragraphs**

Claim 1 is rejected under 35 USC 112, first and second paragraphs as not being supported by clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

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**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Kizilkaya whose telephone number is (571) 272-0978. The examiner can normally be reached Monday-Friday from 9:00 am to 5:30 pm.

If attempts to reach examiner by telephone are unsuccessful, examiner's supervisor, Bruce Campell, can be reached at (571) 272-0974. The fax number for the group is (703) 305-3041 Or 308-4242.

Any inquiry of a general nature relating to the status of the application should be directed to the Matrix Customer Service Center whose telephone number is (703) 308-0196.



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